

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.L.P..No. 719 of 2007()

ST.310/2004 of J.M.F.C.-IV, KOCHI

PETITIONER/COMPALINANT

ICICI BANK LTD., EMGEE SQUARE,
NEAR APDMA JN, M.G.ROAD, ERNAKULAM REP. BY
ITS PRINCIPAL OFFICER.

BY ADV. SRI.KKM.SHERIF
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS: ACCUSED

1. PREMADASAN, KALATHINGAL HOUSE,
GANESH GIRI, SHORNUR-679 123.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.PUZHAKKARA MOHAMMED FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD
ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. Thankappan, J.

Crl.L.P. No. 719 of 2007

Dated this the 1st day of October, 2007

ORDER

This is a petition to special leave to appeal filed by the complainant in S.T.No.310/2004 on the file of the Court of the Judicial First Class Magistrate-IV, Kochi. In the complaint it is stated that the 1st respondent availed financial assistance from the petitioner and towards the partial discharge of the liability, he had issued Ext.P2 and P2(a) cheques to the petitioner and when the cheques were presented for encashment, they were dishonoured for insufficiency of funds. To prove the case against the 1st respondent, the power of attorney holder of the petitioner was examined as PW1 and Exts.P1 to P6 were marked. When the 1st respondent was questioned under section 313 Cr.P.C., he denied the transaction and stated that he had given 35 cheques as security and he had remitted seven installments and the liability was ceased due to frustration of contract. On the side of the defence, DWs. 1 and 2 were examined and Exts.D1 to D4 were marked. After considering the entire evidence, the trial court found that the petitioner had not proved the charge alleged against the 1st respondent. The trial court also found that the 1st respondent had proved by

evidence that the subject matter of hire purchase was not in existence and Exts.P2 and P2(a) were given only as security.

2. After going through the entire evidence, this Court finds that the finding of the trial court that **“evidence of the petitioner seems to be insufficient to prove that the contract between the parties is subsisting”** is correct and hence the impugned judgment requires no interference by this Court. Leave to appeal is rejected, accordingly.

**K. Thankappan,
Judge.**

mn.